



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/620,053	07/20/2000	Yang Cao	129250-000971/US	3581
32498	7590	06/06/2006	EXAMINER	
CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC			MOORE, IAN N	
ATTN: JOHN CURTIN				
P.O. BOX 1995			ART UNIT	PAPER NUMBER
VIENNA, VA 22183			2616	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/620,053

Applicant(s)

CAO, YANG

Examiner

Ian N. Moore

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 11, 24, 32 and 39.
Claim(s) rejected: 1-10, 12-23, 25-31, 33-38 and 40-42.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


DORIS H. TO

SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: applicant arguments do not overcome the rejection set forth in final office action.

Regarding claims 1,4,12,15,28 and 33, the applicant argued that, "...On their face of the instant application and those of the '179 patent are not the same....the words IP and ATM are not synonymous as suggested or implied by the examiner. Because the '179 patent is totally silent with respect to the transmission of IP formatted traffic using ATM or any other transmission scheme the words "ATM traffic" in the '179 Patent may not include the IP formatted traffic as in the claim of the instant application...'179 Patent disclose a controller that directs ATM traffic, not IP traffic, to a circuit switch fabric. Suzuki does not make up for this deficiency..." in section B.

In response to applicant's argument, the examiner respectfully disagrees with the argument above. Note that the rejection is "obviousness-type double patenting" and the rejection is based on the combined system of '179 patent and Suzuki, not solely based on '179 patent as argued by the applicant. Thus, it is clear that "on their face of the instant application and those of the '179 patent" may not be the same. Regarding equating the words IP vs. ATM, applicant only arguing the words rather than the functionally associated with these words. In the final action, examiner is clearly stated that the applicant's patent '179 already discloses routing ATM traffic. As it is well known in the art that routing ATM can carry IP traffic (another word IP traffic can be encapsulated within ATM), and this concept is also disclosed by Suzuki. Thus, one having ordinary skill in the art at the time of the invention to provide IP traffic, as taught by Suzuki in the art in the system of Cao, so that it would provide an exchange apparatus that securely converts an address with a small amount of information and assures and expands services; see Suzuki col. 2, line 64-67. Thus, it is clear that the combined system of Cao and Suzuki discloses the applicant claimed limitation.

Regarding the arguments on '179 being silent or not including IP traffic, again the rejection is based on the combined system of '179 patent and Suzuki, not '179 alone. Thus, these arguments are irrelevant.

Note that the nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. In this case, the claimed invention in the instant application is the same scope as the combined system '179 patent and Suzuki.

Regarding claims 1,12,28 and 33, the applicant argued that, "...Chang'412 fails to teach or suggest: (i) the routing of IP traffic based on ATM service category: (ii) at least one circuit switch fabric or packet switch fabric making up a (iii) hybrid telecommunication switch ...Chang'757 and Dail do make up for these deficiencies" in section C.

In response to applicant's argument, the examiner respectfully disagrees with the argument above. Chang'412 discloses a controller (see FIG. 4, Type check 24; see col. 11, line 46-50; see col. 12, line 15-22) route traffic (see col. 11, line 1-16; signals/traffic) to the circuit switch fabric or packet switch fabric depending on an ATM service category/type of traffic (see FIG. 5, step 50,52 and 56; note that ATM service category/type are defined as real time or non-real time signals; and thus, when routing according to ATM service category one must route by determining whether the service signals are real-time or non-real time signals. Thus, routing to either STM/TDM or ATM ADMs according to type of service as STM real time signals/traffic or ATM real/non-real time signals/traffic; see col. 12, line 9-46; see col. 15, line 25-52).

Chang'412 FIG. 5, step 50 clearly shows determining whether to route the traffic to ATM or STM. Examiner asserts "ATM service categories", in accordance with well establish teaching in art, as "real time signal" and "non-real time signal" services categories (see cited reference below). It is also well establish teaching in art that STM (Synchronous Transfer Mode) or TDM (Time Division Multiplexing) switching primarily switches the real time signal, and ATM (Asynchronous Transfer Mode) switching primarily switches the non-real time signals (see cited reference below). Thus, when determining whether to switch to ATM or STM, it is actually determining signals whether they are real time or non-real time signal, and routing the signal to either STM or ATM accordingly.

The following prior art references disclose STM and ATM and their corresponding "ATM service category", and routing signal to either STM or ATM accordingly.

Dial (US005570355A)- STM traffic is real-time traffic (e.g. voice, narrow band ISDN, or video), and ATM traffic is non-real time traffic (e.g. delay sensitive VBR); see FIG. 11, see col. 7, line 40-65; see col. 16, line 34-57.

Hluchyj (US006381238B1)- signal processing servers 2 switching ATM traffic (which has service categories, e.g. CBR, VBR, rt-VBR, nrt-VBR) to circuit switch fabric 26 or packet switch fabric 23. See col. 1, line 10 to col. 2, line 11.

Afanador (US006317426B1)- STM protocol, a given user receives time slices, which are at predetermined period time (i.e. real time). In contrast, under ATM protocol, a given user receives time slices at non-periodic times, which may be variable or random (i.e. non-real time); see col. 3, line 25-36.

INM

5/30/06